cases fail to recognize the significance of a delivery in escrow, and that the principal case is correct.

EQUITY — JURISDICTION — APPOINTMENT OF RECEIVER IN AID OF JUDGMENT CREDITOR.— The plaintiff judgment creditor was unable to secure execution because the defendant had deposited his furniture in a warehouse, and the warehouseman refused to point out the property. The plaintiff asked that a receiver be appointed. *Held*, that the relief will not be granted. *Morgan* v. *Hart*, 49 L. J. 112 (Ct. App. 1914).

The principal case is undoubtedly right. The appointment of a receiver in cases of this sort is by way of equitable execution, and is only to be resorted to when the remedy for execution at law is inadequate. *Harris* v. *Beauchamp Bros.*, [1894] 1 Q. B. 801. The appointment of a receiver to reach jewelry worn by the debtor is within this principle, for the sheriff cannot levy. *Frazier* v. *Barnum*, 19 N. J. Eq. 316. But in the principal case there was only the practical difficulty of compelling the debtor or the warehouseman to point out the property. It would seem that this could have been accomplished by the statutory remedy of discovery. See RULES OF THE SUPREME COURT, ENGLAND, Order XLII, r. 32, 33.

EVIDENCE — DECLARATIONS CONCERNING INTENTION — POST-TESTAMENTARY DECLARATIONS OF TESTATOR ON ISSUE OF INTENT TO REVOKE. — A will and a codicil written on a single sheet were found among the papers of the testatrix. The signature to the codicil, with a part of the will, had been cut out. To prove that this had been done with intent to revoke the will as well as the codicil, the contestant offered several declarations, made by the testatrix after the execution of the will, during a period of several years prior to her death. *Held*, that the evidence is admissible. *Burton* v. *Wylde*, 103 N. E. 976 (Ill.).

The authorities generally agree that post-testamentary declarations are admissible to support or rebut the ordinary presumption that a lost or mutilated will in the testator's custody has been destroyed with intent to revoke. *Keen* v. *Keen*, L. R. 3 P. D. 105; *Patterson* v. *Hickey*, 32 Ga. 156; *Williams* v. *Miles*, 68 Neb. 463, 94 N. W. 705. Declarations of the testator which accompany the act of revocation are admissible as part of the *res gesta*. *Glass* v. *Scott*, 14 Colo. App. 377, 60 Pac. 186. But in the absence of a special exception to the hearsay rule for post-testamentary statements, declarations subsequent to revocation must depend upon the hearsay exception which admits contemporaneous expressions of a material state of mind. *Aldrich* v. *Aldrich*, 215 Mass. 164, 102 N. E. 487; *Mutual Life Insurance Co.* v. *Hillmon*, 145 U. S. 285; *Commonwealth* v. *Trefethen*, 157 Mass. 180, 31 N. E. 961. This exception should not extend to subsequent declarations offered to prove the act of revocation, for to permit inferences from present states of mind, made admissible by the exception, to past acts, would practically abrogate the hearsay rule, and is thus fundamentally objectionable. *Stevens* v. *Stevens*, 72 N. H. 360, 56 Atl. 916; *Boylan* v. *Meeker*, 28 N. J. L. 274. *Cf. Throckmorton* v. *Holt*, 180 U. S. 552. See 26 HARV. L. REV. 146. But when the issue is the intent accompanying a presumed or admitted physical act of destruction, the only inference is from present to past intent, and there is, therefore, no use made of the mental state exception to avoid the whole hearsay rule. Later declarations of intent to revoke should then be admissible where clearly relevant, that is, if there is strong proof of a continuing intention running back to the time of the act. *Managle* v. *Parker*, 75 N. H. 139, 71 Atl. 637; *Behrens* v. *Behrens*, 47 Oh. St. 323; *Collagan* v. *Burns*, 57 Me. 449. *Contra*, *In re Kennedy*, 167 N. Y. 163, 60 N. E. 442. In the principal case, the declarations covered a considerable period of time, so that it was not unreasonable to infer

a continuous intention to revoke, in spite of the absence of positive proof that any of the declarations were made shortly after the act. *Waterman* v. *Whitney*, 11 N. Y. 157. See 3 WIGMORE, EVIDENCE, § 1737. It is difficult, however, to understand how this reasoning is open to the Illinois court, since it has expressly repudiated any mental state exception to the hearsay rule, at least in non-testamentary cases. *Siebert* v. *People*, 143 Ill. 571, 32 N. E. 431; *Chicago & E. I. R. Co.* v. *Chancellor*, 165 Ill. 438, 46 N. E. 269. The only other explanation for the principal case would seem to be a special hearsay exception, or at least a peculiar treatment of testamentary cases, taking its origin from the practice of the ecclesiastical courts. See *Marston* v. *Roe*, 8 A. & E. 14, 56; *Sugden* v. *Lord St. Leonards*, L. R. 1 P. D. 154, 241; *In re Skelton's Will*, 143 N. C. 218, 55 S. E. 705.

EVIDENCE — DYING DECLARATIONS — ADMISSIBILITY IN CIVIL SUITS. — In an action of contract by an executor, the court rejected the plaintiff's offer to prove his testator's dying declaration as to the terms of the agreement in controversy. *Held*, that the declaration should have been admitted. *Thurston* v. *Fritz*, 138 Pac. 625 (Kan.).

For a discussion of the historical basis and of the expediency of so extending the dying declaration exception, see this issue of the REVIEW at p. 739.

EVIDENCE — SIMILAR FACTS AND OCCURRENCES — OTHER CRIMINAL ACTS TENDING TO PROVE THE ACT CHARGED. — The defendant was indicted for the murder of a young girl who had been killed in the course of an attempt to commit what appeared to be an unnatural sexual crime upon her. A witness testified that on the day of the murder the defendant had said to him, "I want you to watch for me like you have been doing the rest of the Saturdays." He was then permitted to testify that he had watched on previous occasions, while the defendant had taken other girls to his office under similar circumstances. He further testified that he had seen the deceased go to the office, and subsequently he had helped the defendant remove her body; that at this time the defendant had said to him, "Of course you know I ain't built like other men." In explanation of this statement, the witness testified, that on several of the prior occasions he had seen the defendant in unnatural intercourse with other women. To the admission of the testimony as to what took place on these previous occasions the defendant excepted. *Held*, that the evidence is admissible. *Frank* v. *State*, 80 S. E. 1016 (Ga.).

It is a fundamental principle of the common law that one accused of crime must be tried only for the offense charged without reference to his past life or character. *Paulson* v. *State*, 118 Wis. 89, 98, 94 N. W. 771, 774; *People* v. *Shea*, 147 N. Y. 78, 99, 41 N. E. 505, 511. Evidence of other criminal acts which have no logical tendency to prove the crime charged, except as showing that the defendant has a disposition to commit such offenses, is inadmissible. *State* v. *Lapage*, 57 N. H. 245; *People* v. *Sharp*, 107 N. Y. 427, 14 N. E. 319; *The King* v. *Rodley*, [1913] 3 K. B. 468. But where the evidence of other acts is relevant to any material point in issue, otherwise than through the inference to character, it is immaterial that the other acts are criminal. *State* v. *Lapage*, 57 N. H. 245, 288; Parker, C. J., in *People* v. *Molineux*, 168 N. Y. 264, 339, 61 N. E. 286, 312; *Makin* v. *Attorney General*, [1894] A. C. 57. See also, 26 HARV. L. REV. 656. So, where the other criminal acts form part of the same general design, of which the act charged is but another manifestation, evidence of the defendant's connection with the other acts will be competent to show his connection with the crime of which he is accused. *Commonwealth* v. *Robinson*, 146 Mass. 571, 16 N. E. 452; *State* v. *Eastwood*, 73 Vt. 205, 50 Atl. 1077; *People* v. *Zucker*, 20 App. Div. 363, 46 N. Y. Supp. 766; *Affirmed*, 154 N. Y. 770, 49 N. E. 1102. But it seems scarcely possible to prove a general plan to commit sexual